

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALD BUSH : CIVIL ACTION
v. :
CITY OF PHILADELPHIA, et al. : NO. 08-cv-0280

MEMORANDUM AND ORDER

Petitioner, Gerald Bush, filed a petition in this court seeking Habeas Corpus relief pursuant to 28 U.S.C. §2254 on January 15, 2008, as well as supporting “Amendment(s)” to this petition on January 17, 2008 and January 18, 2008. In this material, Mr. Bush raises claims related to a decision of the Family Court of Philadelphia County; Mr. Bush presents a motion to have an adoption decree revoked. Furthermore petitioner claims that the state has failed to meet an obligation to place his children in a safe environment as evidenced by injuries which allegedly occurred while in foster care. Petitioner claims that this state failure constituted a deprivation of liberty under the Fourteenth Amendment. Such relief is not available under the terms of 28 U.S.C. §2254, as the adoption that Mr. Bush attacks is not criminal in nature.

Pursuant to the language of the 28 U.S.C. §2254 itself, a petitioner seeking such relief must be “in custody” **at the time the habeas is filed**.¹ The concept of being “in custody” means that a person is subject to **both**:

- I. significant restraints on liberty which are not shared by the public generally; **and**
- II. some type of continuing governmental supervision.²

Nothing presented to this court by Mr. Bush indicates that he is in custody.

¹Spencer v. Kemna, 523 U.S. 1 (1998).

²Obado v. New Jersey, 328 F.3d 716 (3rd Cir. 2003). Accord, Kumarasamy v. Attorney General of the United States, 453 F.3d 169 (3rd Cir. 2006); Jordon v. Attorney General of the United States, 424 F.3d 320 (3rd Cir. 2005); Barry v. Bergen County Probation Dept., 128 F.3d 152 (3rd Cir. 1997).

Additionally, Mr. Bush has failed to pay the required five dollar filing fee or properly file for leave to proceed in forma pauperis.

Accordingly, this _____ Day of January, 2008, it is hereby

ORDERED that petitioner is granted **provisional** leave to proceed in forma pauperis, for the purpose of **this Order only**, and, it is further

ORDERED that 08-cv-0280 and all materials filed in that civil action are **DISMISSED WITH PREJUDICE**, and, it is further

ORDERED that the Clerk shall mark this matter as **CLOSED** for all purposes, including statistics.

S/ ROBERT F. KELLY

ROBERT F. KELLY, U.S. District Judge